

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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MALCOLM BROOKS,

Plaintiff,

v.

STATE OF NEVADA,

Defendant.

Case No. 2:21-cv-00401-KJD-VCF

**ORDER ADOPTING MAGISTRATE
JUDGE'S REPORT AND
RECOMMENDATION**

Before the Court is Magistrate Judge Ferenbach's Report and Recommendation (ECF #8). Plaintiff Malcolm Brooks ("Brooks") filed a *pro se* notice of removal and application for leave to proceed *in forma pauperis* on March 3, 2021. (ECF #1). Brooks appeared to be attempting to remove a case from Las Vegas Municipal Court involving Brooks' traffic citation. (ECF #1-1). The removal notice also alleged that the State of Nevada violated Brooks' constitutional rights when officers arrested and handcuffed him without a warrant. *Id.* at 2. Brooks sought compensation for interfering with his enjoyment of and trespass on property in the amount of \$1,000,000 and for his continued emotional damage in the amount of \$1,000,000. *Id.*

Magistrate Judge Ferenbach granted Brooks' application to proceed *in forma pauperis*. (ECF #4). Judge Ferenbach interpreted Brooks' notice of removal as a complaint and dismissed it with leave to amend. *Id.* Brooks had until May 10, 2021 to file an amended complaint that stated a legitimate claim for relief, instead of alleging that his arrest violated Articles IV–VI of the U.S. Constitution. *Id.* Brooks was warned that failure to timely file an amended complaint that addresses the deficiencies noted in the order "may result in a recommendation that the dismissed claims be dismissed with prejudice." *Id.* There is an entry in the docket labeled "Complaint," but it is a re-filing of Brooks' notice of removal. (ECF #6). Judge Ferenbach issued this Report and Recommendation that the case be dismissed because Brooks did not file an

1 amended complaint or an objection to the court's previous order. (ECF #8, at 2).

2 Brooks then filed an objection to the Report and Recommendation, indicating that he had
3 filed a response to the court's initial order, but it was lost in the clerk's office and not filed. (ECF
4 #9, at 1). The objection included an "amended claim" naming the State of Nevada and the City
5 of Las Vegas as the defendants¹, alleging violations of Brooks' constitutional rights under the
6 Fourth, Fifth, and Sixth Amendments, and requested damages in the amount of \$1 million per
7 defendant. Id. at 5.

8 Brooks attempted to cure the deficiencies of his complaint in his amended complaint.
9 However, Brooks has not named an individual defendant, and as Judge Ferenbach explained in
10 his initial order, "[w]aiver of a State's Eleventh Amendment immunity will not be found unless
11 such consent is 'unequivocally expressed.'" (ECF #4, at 4). Additionally, Brooks filed a notice of
12 withdrawal of his petition for removal that the Court is reading as a complaint. Brooks has filed
13 another complaint² against individual defendants for this same cause of action in this court.
14 Because Brooks failed to cure the deficiency of his complaint and withdrew his complaint, this
15 action must be dismissed.

16 Accordingly, IT IS HEREBY ORDERED that Judge Ferenbach's Report and
17 Recommendation is **ADOPTED** and **AFFIRMED** in part.

18 IT IS FURTHER ORDERED that the case be **DISMISSED** without prejudice.
19 Dated this 2nd day of August, 2021.

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22 Kent J. Dawson
23 United States District Judge
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27 ¹ Brooks erroneously names the State of Nevada and the City of Las Vegas as plaintiffs in the action, believing
28 that this is a petition for removal instead of a complaint. Construing Brooks' motion liberally, the Court realizes the
parties are defendants.

² Case No. 2:21-cv-01313-GMN-VCF.